IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

NOTICE OF MOTION NO. 1334 O 2006
IN
SUIT NO.924 O 2001
WITH
COURT RECEIVER'S REPORT NO.44 OF 2006

Anil K. Bodhani & Ors. ...Plaintiffs.
Vs.
Manju Meadows Pvt. Ltd. & Ors. ...Defendants.
....
Mr. V. R. Dhond i/b. M/s. Negandhi Shah & Himayatullah for the Plaintiffs.
Mr.Cyrus Ardeshir i/b. M/s. Kanga & Co. for Defendant No.1.
Ms. Radhika Kalpatrai i/b. M/s. Parimal K. Shroff & Co. for Defendant Nos.3, 11 and 12.
Mr. D.D. Madon, Senior Advocate i/b. Mr. Vivek Sharma for Defendant No.10.
Mr.Vinod pandey and Ms.Indira Ghosh i/b. M/s. Shiralkar & Co. for Defendant No.21.
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CORAM : DR.D.Y.CHANDRACHUD, J.

December 21, 2006.

P.C.

The controversy at the present stage relates to the management of a Stud farm by the Plaintiffs who were appointed as agents of the Court Receiver in pursuance of an order passed by a Learned Single Judge of this Court on 5th March 2004. The order of the Learned Single Judge was confirmed in appeal by the

Division Bench on 15th March 2004 subject to the modification that the Plaintiffs would be required to pay royalty to the Court Receiver. The Plaintiffs assumed the agency for managing the Stud farm. The Court has been moved in these proceedings on a report of the Court Receiver dated 28th June 2006 seeking directions as to whether the agency of the Plaintiffs should be terminated in view of the report submitted by a representative of the Receiver. The Receiver also seeks directions to the Plaintiffs to submit details and accounts of the stud farm. The report of the Receiver has been taken up for hearing together with a Notice of Motion moved on behalf of the Defendants seeking termination of the agency of the Plaintiffs, an increase in the royalty with effect from 30th April 2004, a direction to render accounts and an order to remove certain third parties who according to the Defendants were inducted by the Plaintiffs.

2. In pursuance of the order passed by the Division Bench. the Court Receiver fixed the royalty at Rs.20,000/- per month. Under the terms of the agency agreement, the Plaintiffs undertook not to assign the benefit of the agreement to any third party, Clause 5 of the agreement being to the following effect:

> “5. We shall not assign the benefit of this agreement to any third party nor pledge the credit of the Court Receiver or that of business with any party for the purchase of any goods or as consideration for obtaining any service or for any other purpose, whatsoever, but shall make all purchases and obtain service on our own individual responsibility and credit....”

Similarly, the Plaintiffs have also filed an undertaking to the following effect:

> “ We hereby undertake to this Hon'ble Court that we shall not dispose off or part with or assign or transfer or sell or encumber or mortgage or exchange or offer as security or otherwise in any way alienate or deal with or dispose off or any part thereof the said stud farm.”

The undertaking also records that the Plaintiffs shall personally manage the stud farm and shall not allow any third party to occupy the farm or to run the premises.

3. Both the report of the Receiver and the submissions urged on behalf of the Defendants in support of the Notice of Motion are founded on a site report submitted by the agents of the Receiver on 20th May 2005 during the course of a surprise visit. The Receiver informs the Court that the site visit was occasioned by a letter dated 7th March 2005 of the First Defendant alleging that

the Plaintiffs had committed a breach of the agency agreement. The representative of the Receiver notes that (i) one of the Stallions had died in October 2004 while the second Stallion viz., Sizzling Melody was not found at the farm; (ii) One of the eight Brood Mares was found on the farm besides which there was a Colt and one Filly; (iii) A number of horses belonging to outsiders were found on the farm; (iv) While there were three employees of the Plaintiffs present on the farm, 13 workers of a person by the name of Mr.Dhunjibhoy and 10 workers of Mr. Pesi Shroff were present of whom a Trainer was occupying the officer's quarters; and (v) The feed stored in the farm was stated to belong to the aforesaid two persons.

4. On the basis of the site visit, the submission that has been urged on behalf of the Defendants in support of the Notice of Motion is that the Plaintiffs have committed the following breaches of the agreement of agency:

(i) Third parties, it is alleged, are found in possession of the stud farm who were being allowed to manage the farm; (ii) The farm had been under-insured to the extent only of Rs.5 lakhs; (iii) The assets of the farm have been disposed of more particularly,

the Stallion by the name of Sizzling Melody and seven Brood Mares; (iv) Several old trees have been chopped; and (v) Book debts which had been realised by the Plaintiffs have not been deposited with the Court Receiver. In any event, it has been submitted that the royalty of Rs.20,000/- per month would need to be revised having regard to the dimensions and location of the farm. Moreover, it was submitted that the fixation of royalty has not been on any rational basis and no report of valuation was called before the royalty was fixed. The report of the Receiver broadly follows the same lines (save and except in regard to the issue of royalty).

5. On the other hand, on behalf of the Plaintiffs, it has been submitted that the Plaintiffs own 99.97% of the share capital. The remaining shares of the First Defendant are held by the Second Defendant and by the Tenth Defendant who together hold ten shares. The Plaintiffs submit that they were constrained to move the Court when the Defendants illegally attempted to reduce their position to a minority. The principal asset of the First Defendant is the stud farm which is situated at village Shirgaon, near Somatane Phata, Mumbai-Pune Highway, Taluka Maval, District Pune.

According to the Plaintiffs, the order of the Learned Single Judge by which they came to be appointed as agents of the Receiver was passed in the background of the circumstance that the Second Defendant had systematically run down the management of the First Defendant and even dues of the Bank had not been paid as a result of which a securitization notice was issued by the Bank. A solemn statement made before the Court on behalf of the Second Defendant was breached. The financial condition of the Company was poor. The poor condition of the animals when the Court Receiver took possession has been noted in the report of the Veterinarian which is on record. The Plaintiffs submitted before the Court that after executing an agency with the Receiver, they have invested an amount of Rs.83 lakhs inter alia to pay the dues of the bank. According to the Plaintiffs, the purchase and sale of live stock is perfectly regarded as a part of the business of managing the stud farm. The Plaintiffs rely upon a chart annexed to the affidavit in reply explaining the position of the animals. According to the Plaintiffs, the scope of their appointment was to manage the stud farm and even before the Receiver parties accepted that purchase and sale of live stock will constitute a part of the business. According to the Plaintiffs, an agreement was

entered into by them with an entity by the name of Five Star Shipping Company Pvt. Ltd. on 15th February 2005 by which they agreed to house and look after the animals belonging to the aforesaid entity on charges of Rs.1,000/- per animal subject to a minimum of Rs.65,000/- per month for the use of the facilities on the farm. The agreement was valid until 15th January 2006. On behalf of the Plaintiffs, it has been submitted that there is absolutely no basis for the submission that the Plaintiffs have assigned their interest in the stud farm and that the agreement which which they permitted live stock belonging to third parties to be housed on the farm does not amount to an assignment of the interest in the farm. At the same time, it has been stated before the Court that the Plaintiffs are willing to terminate the agreement with notice of three months in order to obviate any controversy. Counsel appearing on behalf of the Plaintiffs urged that the amount received from the sale of horses has been accounted for in a statement filed before the Court Receiver. An amount of Rs.5 lakhs that was received from RWITC is reflected in the accounts. In so far as the payments to the employees are concerned, it has been submitted that several disputes were settled, payments were made and receipts obtained in full and final settlement.

6. In considering the rival submissions that have been urged before the Court, it would be necessary to emphasise the circumstances in which a Learned Single Judge of this Court directed the Court Receiver to take possession of the Stud farm from the Second Defendant and to appoint the Plaintiffs as his agents. In his order dated 5th March 2004, the Learned Single Judge noted that when the Motion had come up before the Court on 21st November 2003, the Court had been informed that the stud farm which was under the control and management of the Second Defendant had run into difficulties; payments to the Bank were over due; electric supply was disconnected; workers had not been paid; and payments towards land revenue and the dues of the Village Panchayat were over due. The Second Defendant had assured the Court that on or before 31st January 2004, he would clear all the dues of the workers, get electric supply restored, pay the dues on account of land revenue and make substantial payment to the Bank in order to ensure that the Bank did not adopt any adverse action. The Learned Single Judge noted in his order that while part payment had been made to the MSEB resulting in the restoration of the electric supply and payment had been made to

the workers and towards the statutory dues, no payment whatsoever was made to the Bank. As a result, the Bank had issued a notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The dues of the bank were to the extent of Rs. 57.88 lakhs. No payment had been made to the Bank despite its securitization notice dated 3rd February 2004. The Learned Single Judge noted that the Second Defendant was not in a position to make any substantial payment to the Bank and that there was a clear breach of the solemn statement made to the Court. In these circumstances, the Court was of the view that considering the conduct of the Defendants and the imminent likelihood of the sale of the property by the Bank, it was necessary to appoint the Court Receiver with a direction to appoint the Plaintiffs as his agents. Amongst the directions that the Learned Single Judge issued, the Plaintiffs were to enter into negotiations with the Bank immediately to settle the dues of the Bank and produce documents evidencing a settlement within a period of two weeks. It was thereupon that the Receiver was to take possession of the property. Consequential directions were also issued in regard to the payment of other dues. The Plaintiffs were entitled to institute proceedings

for recovering the amount due to the stud farm which was to be deposited with the Court Receiver. The order of the Learned Single Judge, however, provided that the Plaintiffs would neither have to pay royalty or furnish security. In appeal, the direction was modified to the extent that the Plaintiffs were required to pay royalty to the Court Receiver. The Division Bench in its order dated 15th April 2004, however, observed that having regard to the fact that the Plaintiffs had paid an amount of Rs.60 lakhs to the Bank, no security should be required to be furnished.

7. In pursuance of the order passed by the Division Bench, the Plaintiffs made a total payment of Rs.83,01 lakhs towards the outstanding dues. An amount of Rs. 60.02 lakhs was paid to the Bank towards the settlement of the outstandings of the bank, an amount of Rs. 20.75 lakhs was paid towards retrenchment compensation of the workers, an amount of Rs. 1.04 lakhs was paid to the Grampanchayat and an amount of Rs. 1.18 lakhs was paid to the MSEB. These facts are contained in the affidavit filed on behalf of the First Plaintiff to the report of the Court Receiver. In para 8 of the affidavit it has also been averred that when the Stud farm was under the control and management of the Second

Defendant, the Company had run into heavy losses. Whereas the revenue in March 2000 was Rs. 3.14 crores, this figure decreased to Rs. 1.7 crores, Rs.64 lakhs and Rs.44 lakhs in 2001, 2002 and 2003. The net losses had during the tenure of the Second Defendant gone up from Rs.6 lakhs to Rs. 69 lakhs.

8. In para 12 of the affidavit in reply filed by the First Plaintiff to the report of the receiver, the attention of the Court has been drawn to the position of the stud farm on 1st April 2004 when the Court Receiver visited the farm for taking symbolic possession from the Second Defendant. At that stage, the Manager of the First Defendant informed the representative of the Court Receiver that due to non-availability of horse feed and a doctor, about 5 to 6 horses had died after July 2003. The representative of the Court Receiver also noted in his report that the First Defendant had not maintained the farm in a proper condition. On 1st April 2004, the Veterinarian conducted a physical examination of the horses which revealed that the animals were in a poor state of health. Many of the medicines in the medical room were beyond their dates of expiry. Both the report of the Court Receiver's representative and the report of the Veterinary Doctor are annexed to the report of the

Court Receiver.

9. The circumstances of the case would, therefore, show the background in which the Court Receiver came to be appointed as Receiver. There is merit in the submission urged on behalf of the Plaintiff that there was a systemic mismanagement of the stud farm by the Second Defendant. The property comprising of the farm had itself been rendered in jeopardy due to the non-payment of the dues of the Bank which led to a securitization notice. The condition of the animals lodged in the farm was at the time when the Receiver took possession far from satisfactory. This background would be relevant to determine as to whether the relief which has been sought in the Motion should be granted.

10. The main grievance in regard to the conduct of the Plaintiffs centers around the agreement by which the Plaintiffs permitted Five Star Shipping Company Pvt.Ltd. to house its horses at the stud farm. On behalf of the Defendant, fairly it has not been disputed that the activities of a Stud farm can comprehend permitting horses belonging to other owners to be lodged there but the grievance is that the horses belonging to Mr.Dhunjibhoy and

Mr.Pesi Shroff were not taken on livery basis. Clause 5 of the agency agreement precludes the Plaintiffs from assigning benefits of the agreement to the third party. Similarly, their undertaking prohibits the Plaintiffs from disposing of, parting with the possession of, assigning, transferring, selling or encumbering the stud farm. It cannot be said that the agreement between the Plaintiffs and M/s.Five Star Shipping Company amounted to an assignment or disposal of any interest in the stud farm. The agreement only amounts to a bare licence to lodge horses within the precincts of the farm and does not amount to any assignment of an interest in the farm. At the same time, it must be necessary to record that during the course of the submission, Counsel appearing on behalf of the Plaintiffs has clarified on instructions that without prejudice to their contentions and to obviate any controversy, the Plaintiffs are ready and willing to discontinue the agreement with three months' notice of termination. An affidavit dated 19th December 2006 of the First Plaintiff has been filed before the Court.

11. In Exhibit '7' to the affidavit in reply, the Plaintiffs have set out a chart explaining the position of the two Stallions. One

Stallion has died. The second Stallion, Sizzling Melody, has presently been leased out and it has been stated on behalf of the Plaintiffs that the monies that have been realised in the transaction will be brought into the business and shall be duly reflected in the accounts. In so far as the book debts are concerned, Counsel appearing on behalf of the Plaintiffs has stated before the Court that while an amount of Rs. 5.02 lakhs received from RWITC has been reflected in the accounts, in terms of the order of the Learned Single Judge, the amount shall be deposited with the Court Receiver.

12. In the circumstances, no case has been made out for termination of the agency of the Plaintiffs.

13. The Court Receiver has fixed the royalty at Rs.20,000/- per month for the stud farm. The representative of the Court Receiver clarified before the Court that before fixing the royalty, no valuation was carried out. There is merit in the grievance of the Defendants that the royalty has not been fixed on any rational basis. It would, therefore, be necessary to direct the Court Receiver to carry out a valuation and thereafter to determine the

royalty afresh.

14. The order of the Learned Single Judge directing the appointment of the Court Receiver as Receiver and for appointing the Plaintiffs as his agents clarifies that the Plaintiffs would assume the agency in order to manage the Stud farm. During the course of the proceedings, this Court had called upon Counsel appearing on behalf of the Plaintiffs to clarify as to whether the Plaintiffs would be able to make a firm commitment in regard to the investment that would be made in the Stud farm so as to prudently manage the property as a stud farm. A statement has accordingly been placed on the record in which it has been stated thus:

> "1. Setting up a stud farm is a capital intensive project. The investment involves deployment of funds:-
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> (a) in acquiring live-stock; and
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> (b) towards operating expenses viz. feeding, maintaining and looking after animals at the farm.
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> 2. A gestation period of about five years is required for making a stud farm functional. During this gestation period, quality live stock is progressively acquired; breeding is done; foals are produced; and sold (when they complete two years).
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> 3. The Plaintiffs shall, in this gestation period, invest in the stud farm a sum in the range of Rs.5 crores. Out of this a sum of about Rs.1 Crore will be invested in

the first year itself.

4. In the gestation period, the Plaintiffs will progressively acquire about 20 quality brood mares.

5. The Plaintiffs do not intend to acquire a stallion. This is because several good stallions are available in stud farms close to Poona which can be used to cover the brood mares at the Farm.

6. The Plaintiffs will be at liberty to stable livestock of others. These will however, be attended to, looked after and fed by the staff including a Veterinary Doctor employed by the Plaintiffs at the Farm.

7. The livestock acquired hereafter, and the offspring produced and other capital assets acquired from the Plaintiffs' finances shall be the property of the Plaintiffs. The Plaintiffs will be at liberty to buy and/or sell livestock. The Plaintiffs will also be at liberty to import livestock for the Farm. For this purpose, the Plaintiffs shall be at liberty to apply to the appropriate authority for obtaining licences for the purpose of import of livestock. The Plaintiffs shall also be at liberty to apply to the Ministry of Agriculture for Registration.

8. It is respectfully submitted that if any conditions are imposed, these be minimal so that the Plaintiffs have the greatest operational flexibility and the operations at the Farm are not strait-jacketed.

9. The Plaintiffs will file with the Receiver accounts for the period commencing their appointment as agents till date. The Plaintiffs will hereafter periodically (such period as the Court fixes) file accounts of the business of the stud farm."

In my view, it would be appropriate if this Court issues certain directions in order to effectuate the proper management of the farm as a Stud farm during the period when the Plaintiffs continue to act as agents of the Court Receiver. Accordingly the following directions are issued:

1) The Court Receiver shall within a period of eight weeks refix the royalty to be paid by the Plaintiffs in pursuance of the order passed by the Division Bench after carrying out a valuation of the stud farm. Since the royalty has been fixed on the basis of the Stud farm as it stood on the date when the Plaintiffs took possession, the investments which are to be made by the Plaintiffs hereinafter for the acquisition of live stock, or otherwise, shall not be taken into consideration as a circumstance for reduction in the amount of royalty;

2) Since by the order of the Division Bench, the requirement of providing security was dispensed with having regard to the amounts which were to be invested by the Plaintiffs for settling the dues of the bank and dues on account of electricity, the aforesaid expenditure shall not be taken into account in

determining the amount of royalty;

3) The refixation of royalty by the Court Receiver shall take effect from the date on which the Plaintiffs have assumed charge as agents of the Court Receiver;

4) The Plaintiffs shall file accounts quarterly with the Receiver since the date on which they have taken over possession. Defendants 2 and 8 shall be at liberty to take copies of the accounts from the office of the Court Receiver upon the payment of necessary costs and expenses;

5) The Court Receiver shall cause the stud farm to be inspected periodically once in every four months. At the time of inspection, the Court Receiver shall call upon the Registrar of the Stud Book Authority of India (Defendant No.21) to accompany him in order to enable the Registrar to provide expert assistance to the Court Receiver on the state of the Stud farm. The Registrar of Defendant No.21 shall submit a report to the Receiver. In the event that the Court Receiver finds that there are any deficiencies in the management of the stud farm, the Receiver shall place a

further report before the Court for directions;

6) The Plaintiffs have undertaken to the Court in their affidavit dated 19th December, 2006 that they shall discontinue the arrangement with Five Star Shipping Company Pvt. Ltd. by giving three months' notice of termination under Clause 5 of the licence agreement dated 15th March 2005. Undertaking accepted. All horses brought in by Five Star Shipping Company Pvt. Ltd. will accordingly leave the farm on or before the expiry of the period of three months from today. The Plaintiffs shall within a period of two weeks from today furnish to the Court Receiver details of the horses belonging to Shri. Dhunjibhoy and Shri. Pesi Shroff that were kept in the custody of or trained by the Stud farm together with the payments which have been realized;

7) Counsel appearing for the Plaintiffs has stated that an amount of Rs.5,20,000/- that was realized on account of the sale of horses which belonged to the Stud farm prior to the date on which the Plaintiffs acquired agency has been reflected in the accounts and the amount shall be deposited with the Receiver within two weeks without prejudice to the rights and contentions of the

Plaintiffs in the suit. Statement accepted;

8) The Plaintiffs shall manage the property of which they have acquired agency as a Stud farm. In order to facilitate the fulfillment of the agency, the Plaintiffs have stated before the Court thus :

i) A gestation period of five years is required for making a Stud farm fully functional during which period live stock of the requisite quality is progressively acquired, breeding is done and foals are produced. During the period of gestation the Plaintiffs shall invest in the Stud farm an amount of Rs.5 Crores of which an amount of Rs. 1 Crore shall be invested during the course of the first year. The rest of the amounts shall be progressively invested. During the period of gestation, the Plaintiffs will progressively acquire 20 quality broodmares;

ii) The existing stallion at the Stud farm, Sizzling Melody, has been presently leased out and any monies

which are realized from the transaction shall be brought into the business and shall be duly accounted in the accounts of the business;

iii) While the Plaintiffs would be at liberty to stable the live stock of others, the live stock would be looked after and fed by the staff of the Plaintiffs including a veterinary doctor employed by the Plaintiffs at the stud farm;

iv) The live stock acquired hereinafter, the off spring produced and other capital assets acquired from the Plaintiffs' finances shall be the property of the Plaintiffs. The Plaintiffs will be at liberty to buy and/or sell live stock or to import live stock for the purposes of the stud farm. In order to facilitate the import of live stock, the Plaintiffs would be at liberty to apply to the appropriate authority concerned for obtaining licences and/or to the relevant ministry of the Union of India for registration;

v) In the event that the Plaintiffs seek to sell the presently existing live stock at the Stud farm, this shall be carried out either through the RWITC or, in the alternative, through private treaty with prior notice to the advocates appearing on behalf of the Second and Eighth Defendants;

vi) In stabling the live stock of others, the Plaintiffs shall ensure that the main purpose of managing the property as a Stud farm is not deviated from;

vii) The Plaintiffs have undertaken to have all the structures at the farm duly insured at an insured value that would be determined by the Court Receiver on the basis of the valuation that would be obtained by the Receiver.

15. The aforesaid statements are recorded and accepted.

16. The grant of further relief in the Notice of Motion is not warranted.

17. The Notice of Motion and the Report of the Receiver are accordingly disposed of with these directions.